

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MIGUEL LUNA §
§
V. § CIVIL ACTION NO. 3:21-64
§
AMERICAN NATIONAL §
INSURANCE COMPANY §

DEFENDANT'S NOTICE OF REMOVAL

Defendant, American National Insurance Company (“American National”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a) and 1446 based on federal question jurisdiction.

PROCEDURAL HISTORY

1. On February 19, 2021, Plaintiff Miguel Luna (“Luna”) filed his Amended Petition against American National in the 243rd Judicial District Court of El Paso County, Texas, Cause Number 2021-DCV-0264, alleging violations of the Family Medical Leave Act, 29 U.S.C. §2601 *et seq.* (“FMLA”) and its amendments under the Families First Coronavirus Relief Act (“FFCRA”).¹ American National, through its counsel, received and accepted service of the Amended Petition on February 22, 2021. This Notice is filed within thirty (30) days of American National’s receipt of Plaintiff’s Amended Petition and is timely filed under 28 U.S.C. §1446(b). Pursuant to 28 U.S.C. §1446(a) a copy of all process, pleadings and orders in this case are attached as Exhibit A.

¹ Plaintiff filed his Original Petition against American National Insurance Services Company on January 25, 2021. American National Insurance Services Company is not the correct defendant. Counsel for American National contacted Luna’s counsel, informed him of the error, and agreed to accept service of an amended petition naming American National Insurance Company as the correct party.

BASIS FOR REMOVAL

2. This Court has original federal question jurisdiction over claims that arise under the laws of the United States. 28 U.S.C. §1331; *see also* 28 U.S.C. § 1441. A lawsuit filed in state court is removable if it affirmatively alleges a federal claim. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003). The presence or absence of a federal question is governed by the “well-pleaded complaint rule,” which provides that federal jurisdiction exists when a federal question is presented on the face of a plaintiff’s complaint. *Aetna Health Inc. v. Davila*, 542 U. S. 200, 207 (2004); *Hoskins v. Bekins Van Lines*, 343 F.3d 769, 772 (5th Cir. 2003).

3. Luna asserts that she was entitled to protected leave under the FMLA and/or FFCRA and that American National failed to provide him with required leave, interfered with his FMLA/FFCRA rights, terminated his employment, discriminated against him, and retaliated against him, all in violation of the FMLA and FFCRA. *See* Plaintiff’s Amended Petition at pages 4-5. This Court has original jurisdiction over all of Luna’s causes of action since all of his claims are based on alleged violations of a federal statute. American National’s removal of the matter to this Court is proper pursuant. 28 U.S.C. § 1441. *See Abeyta v. Liberty Mutual Group, Inc.*, No. SA-14-CV-533-XR, 2014 WL 3535215 (W.D. Tex. July 16, 2014) (FMLA claim removable); *Hatch v. ABM Parking Svcs, Inc.*, No. A-14-CA-1094-SS, 2015 WL 433326 (W.D. Tex. January 30, 2015) (FMLA claim removable). *See also* 28 U.S.C. §124(d)(3) (El Paso County falls within the United States District Court for the Western District of Texas, El Paso Division). Additionally, pursuant to 28 U.S.C. §1446(d), written notice of the filing of this Notice of

Removal is being served on Luna through his counsel and will be filed with the District Clerk for the 384th Judicial District Court for El Paso County. A copy of the Notice of Filing Notice of Removal is attached as Exhibit B.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that this Court accept this Notice of Removal, assume jurisdiction of this cause, and grant American National such other and further relief, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

GREER, HERZ & ADAMS, L.L.P.

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Counsel for Defendant

CERTIFICATE OF SERVICE

I certify on the 15th day of March 2021, a true and correct copy of the foregoing was served via the Court's ECF system upon all counsel of record.



Bruce A. Koehler

INDEX OF ATTACHMENTS TO NOTICE OF REMOVAL

<u>EXHIBIT</u>	<u>DOCUMENT</u>	<u>STATE COURT FILING DATE</u>
A-1	Docket Sheet for Case No. 2021-DCV-0265	--
A-2	Plaintiff's Original Petition	January 25, 2021
A-3	Citation to American National Insurance Service Company	Issued January 26, 2021
A-4	Order Setting Hearing	February 10, 2021
A-5	Plaintiff's Amended Petition	February 19, 2021
A-6		March 9, 2021
B	Notice of Filing of Notice of Removal	Served and filed March 15, 2021